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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

19 Cr. 254 (ALC)

REGINALD FOWLER,

Teleconference

Defendant.

Teleconference

New York, N.Y.
October 15, 2020
2:00 p.m.

Before:

HON. ANDREW L. CARTER, JR.,

District Judge

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

SEBASTIAN SWETT

JESSICA GREENWOOD

SAMUEL ROTHCHILD

Assistant United States Attorneys

Hogan Lovells US LLP

Attorneys for Defendant

James G. McGovern

MICHAEL HEFTER

SAMUEL RACKEAR

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1 THE COURT: Let's go ahead and call it.

2 DEPUTY CLERK: Okay. Counsel, I'm just going to ask
3 that when you address the Court, to please state your name each
4 time prior to talking, and when you are not addressing the
5 Court, to please place your phones on mute. We do have a court
6 reporter on the line and we'd like an accurate record of
7 today's conference. Thank you.

8 (Case called)

9 DEPUTY CLERK: Counsel, please state your appearance
10 for the government.

11 MR. SWETT: Good afternoon.

12 This is AUSA Sebastian Swett, for the United States.
13 I'm joined on the line by AUSAs Jessica Greenwood and Sam
14 Rothchild as well.

15 DEPUTY CLERK: And for the defendant?

16 MR. MCGOVERN: It's Jim McGovern and Michael Hefter
17 and Samuel Rackear, from Hogan Lovells, on behalf of Mr.
18 Fowler. And I believe we were just joined by Mr. Rosenblum
19 from St. Louis.

20 Is that right, Scott?

21 Well, I guess not. And Mr. Fowler is, of course, on
22 the line as well.

23 DEPUTY CLERK: Mr. Fowler, please state your name for
24 the record. Thank you.

25 THE DEFENDANT: Reginald Fowler.

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1 DEPUTY CLERK: Thank you.

2 THE COURT: Okay. Good afternoon. I hope everyone is
3 safe and healthy.

4 We're proceeding by telephonic conference due to the
5 COVID-19 pandemic. I will note that in the past conferences,
6 Mr. Fowler has been appearing by telephone anyway because he
7 doesn't reside in New York City. And we will continue to allow
8 that.

9 And just for the record, Defense Counsel, do you waive
10 your client's formal appearance in court for the purposes of
11 this call?

12 MR. MCGOVERN: That's correct, your Honor.

13 THE COURT: All right. How do the parties wish to
14 proceed?

15 Let me hear from the government first?

16 MR. SWETT: Your Honor, this is AUSA Sheb Swett.

17 And the government would like to proceed with the
18 January 11th trial date. We understand that S.D.N.Y. has a
19 committee that prioritizes trials based on a number of factors.
20 And we don't know right now where this trial fits in, because
21 we know there's a bit of a backlog, but we believe that the
22 government will be prepared to put on its case by January 11th.
23 We have already had one lengthy adjournment of the trial date
24 in this case. That was from April of last year -- or I guess
25 April of this year to January of 2021. And so we think it's

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1 appropriate to move forward with the trial date.

2 And in either event, we would like clarity to the
3 extent possible. I know that there are a lot of moving parts
4 for the Court to deal with, but prepping this trial will be a
5 significant undertaking, including witnesses in various places
6 around the country. So the sooner we know, obviously the more
7 useful it is for us.

8 THE COURT: Okay. Let me hear from defense counsel.

9 MR. ROSENBLUM: This is Mr. Rosenblum.

10 MR. MCGOVERN: Your Honor, our view is that we need
11 the case to be adjourned from January. We have not been able
12 to do anything toward preparation of the case over the last
13 several months because of the pandemic and the situation.

14 The one thing that is important to note about this
15 case is that, other than perhaps a phone call that was made
16 into the Southern District allegedly at some point toward the
17 very end of this alleged conspiracy, nothing in this case
18 occurred in the Southern District of New York, the New York
19 City metropolitan area. The last superseded count occurred
20 generally in LA, and Phoenix, and in Las Vegas, the facts
21 surrounding those. The underlying counts themselves started in
22 -- the first round of counts started in Portugal and went from
23 there to Arizona. So it is really, really important for us,
24 and our ability to call witnesses, to be able to have access to
25 witnesses both that they we want to investigate on the

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1 government side but also that we may want to call ourselves.

2 So, for instance, we have witnesses who were
3 personally involved in the very beginning of this conspiracy
4 who reside in Portugal. Right now Portugal -- you know, we've
5 done some basic checking with the embassies and that sort of
6 situation. Portugal, I believe, is in worse shape than the
7 U.S. The ability for one to get a Visa at this point is very,
8 very difficult; short of, I think, like severe humanitarian
9 concerns. And then domestically, we have a list that is
10 extremely malleable of states of which one travels for which
11 you have to have a 14-day quarantine. I know that Mr.
12 Rosenblum is currently on that list. His name is on that list.
13 So if he were to come here, he would have to quarantine for two
14 weeks before he could even get here or walk into the
15 courthouse.

16 So it's unfortunate. I mean, it's a very, very
17 difficult time for everybody. I don't know what the Southern
18 District list is that's operating in the background. I suspect
19 that Mr. Fowler's case would not be on it, being he is a, you
20 know, nonincarcerated defendant whose case by comparison is
21 probably relatively new. And so we would ask the Court,
22 perhaps because there is so much uncertainty here as to where
23 we will be, perhaps change that trial date into a control date
24 so that, come January of 2021, we can perhaps have a more
25 informed conversation of what it would take to try a case like

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1 this in the Southern District courthouse. I know that there
2 are other trials that have started. I don't know how that's
3 doing or what the future holds for those cases.

4 And then I would just add that we're still -- we've
5 been in communication with the government, and they've been
6 very responsive to our questions and issues that have come up.
7 But one of the things they just revealed to us is that there is
8 a fair amount of discovery that they plan to turn over that
9 they haven't turned over yet. So it's not like the case is
10 particularly ripe for trial right now, but given the
11 circumstances, our ability to call witnesses, to even have our
12 lawyers here, are going to be extremely, you know, hampered by
13 the unfortunate existence of this pandemic that, you know,
14 obviously it's none of our fault.

15 THE COURT: Okay. It seems to me that it makes sense
16 to perhaps convert that trial date to a status conference date.
17 Obviously, Mr. Fowler has a right to seek a speedy trial. But
18 since defense counsel's indicating that they need more time to
19 prepare for trial, that coupled with this COVID-19 pandemic, I
20 think it makes sense to postpone the trial. Mr. Fowler is out
21 of custody, and there is a backlog of cases. And obviously
22 criminal cases in which there are defendants in custody will
23 take priority over Mr. Fowler's case. But in any event,
24 defense counsel has indicated they need more time. We have a
25 limited number of courtrooms under which under the existing

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1 circumstances we'd be able to try this case anyway, because we
2 need to make sure that the jurors can be socially distant from
3 each other. My courtroom is not one of those courtrooms. And
4 as the government has indicated, we'd have to get on a list.
5 And I think the submission date for that list is next month.
6 So it seems to me that it makes sense to convert the
7 January 11th date to a status conference date. We may have a
8 clearer sense hopefully by then as to where we are with the
9 availability of courtrooms and where the defense is in terms of
10 their preparation.

11 The other thing I will just ask I guess is, at one
12 point there was almost a resolution of this case. And my
13 recollection is there were some issues regarding forfeiture
14 that was one of the main issues at that time.

15 Have there been any other discussions regarding that?
16 Because it does seem to me that if, for example, that is the
17 sticking point, it certainly is possible that perhaps there
18 could be a resolution with or without an agreement with the
19 government and the issue of forfeiture could be dealt with
20 later, could be dealt with by the Court if Mr. Fowler wanted to
21 waive any right to a jury trial on the forfeiture issue. But
22 let me just find out. Have there been any thoughts about that
23 or discussions about that? Just without getting into the
24 details of any of those discussions.

25 But have there been any discussions about that between

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1 the parties starting with counsel for the defense?

2 MR. MCGOVERN: No, your Honor. And this isn't a
3 detail. The original plea agreement was predicated on a
4 complete acceptance of the forfeiture analysis by the Southern
5 District, which we disagreed with. And so, frankly, that's
6 what blew up the deal, okay, was their mandate that he accept
7 that. But since that time, as you know, they superseded the
8 indictment. So it seems that more oral conversations in that
9 regard just disappeared.

10 If the AUSA needs to correct me, feel free to do so.

11 THE COURT: Okay. Counsel for the government?

12 Counsel for the government, you're on mute. We can't
13 hear you.

14 MR. SWETT: My apologies, your Honor. This is AUSA
15 Swett.

16 And what Mr. McGovern said is largely accurate. We
17 extended a plea at the beginning of this year. It didn't go
18 through. And since then, we superseded. And we have not
19 extended an offer since then, and there are not ongoing
20 discussions at this point.

21 THE COURT: Okay. Thank you. That's helpful.

22 I guess my question then again is -- I don't know.
23 Obviously Mr. Fowler has a right to a trial. And we can
24 certainly hopefully schedule that at some point. But
25 obviously, Mr. Fowler could plead guilty without an agreement

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1 with the government, could plead to the indictment if that's
2 something he chose to do. And we could still deal with the
3 issue of forfeiture later if that is the sticking point. If
4 there are other sticking points, then that's fine. But I don't
5 know if there's been any thought about that from defense
6 counsel.

7 Do you have anything you want to share about that at
8 this time, defense counsel?

9 MR. MCGOVERN: Judge, the only thing I would share on
10 that front is there was always this looming wire fraud count
11 out there that has been, you know, superseded into the
12 indictment. And to the extent that that option was available
13 to us, we were -- we were -- I'm pretty sure we were told that
14 that option wouldn't be available to us because they would just
15 supersede with this other piece of the case. But I don't want
16 to speak for the government. And if I'm not being clear, I can
17 try and offer more clarity.

18 THE COURT: I guess -- I guess -- let me just say
19 this. Again, I don't want to get involved in any plea
20 negotiations, but I guess this isn't necessarily relevant to
21 negotiations.

22 Hypothetically speaking, Mr. Fowler, without agreeing
23 to anything with the government, could plead guilty to all of
24 the counts in the indictment and still we could deal with
25 forfeiture later. I suppose he'd have a right to a jury trial

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1 simply on the issue of forfeiture or he could waive -- the
2 parties could waive any jury trial on that and I could decide
3 the issue of forfeiture if forfeiture is the sticking point. I
4 don't know -- if that is the only sticking point, I don't know
5 how efficient it would be to have a jury trial on these other
6 issues if that's not the sticking point. Obviously, he has a
7 right to a jury trial, and the government would be required to
8 prove guilt beyond a reasonable doubt, and the government would
9 have to prove the forfeiture allegations by a preponderance of
10 the evidence to the jury of a bifurcated trial. But I guess
11 what I'm saying is, even if the government doesn't extend any
12 offer, Mr. Fowler could plead to the indictment without
13 admitting the forfeiture allegation and there could be a
14 separate proceeding to deal with the forfeiture allegation. I
15 guess that's what I'm trying to say, if that is the sticking
16 point. If there are other sticking points, then that's fine.

17 Defense counsel, you have anything you want to add
18 about that?

19 MR. MCGOVERN: First, Judge, thank you for the
20 observation. I mean, it's really something that is definitely
21 something we should be considering, you know, as an option.
22 And frankly, we have considered these pieces as the case has
23 unfolded. I think right now our sticking point is two-fold.
24 It's the forfeiture and the additional counts that they
25 threatened and then added. And so right now, it would be a

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1 situation where we'd be pleading straight up to the money
2 transmitter charges and a bank fraud for which we would argue
3 there's no loss. But then there's, of course, this other
4 additional count that's been added. And I think that that may
5 be our issue -- or the two issues that we're facing. But I'm
6 happy to go back and use this time fruitfully to have those
7 conversations with Mr. Fowler and hopefully, you know, have
8 further conversations with the government.

9 THE COURT: Okay. Anything else from the government
10 on this?

11 MR. SWETT: On that point, no, your Honor.

12 I do have one quick request. And I don't know if
13 now's a good time to make it.

14 THE COURT: Okay. Go ahead.

15 MR. SWETT: So, we understand that the January 11th
16 trial date for perhaps the final pretrial conference, which I
17 think is a few days before January 11th, is converted to a
18 status conference. The government would request that the Court
19 still set a new trial date, you know, three months out from
20 January for two reasons: First of all, I do think, you know,
21 given the logistical issues of prepping witnesses, having a
22 date in mind gives us the certainty to start doing things like
23 trying to get Visas, you know, trying to make travel
24 arrangements, things like that. I think it's helpful for the
25 parties to have some sense of the time frame in order to deal

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1 with these logistical problems.

2 And secondly, to the extent there is a backlog of
3 cases, I think, you know, having a trial date at least sort of
4 stakes out our position in the line. Obviously there are other
5 considerations that may move trials ahead of ours, but I don't
6 -- I think the government would prefer having a trial date on
7 the calendar for that reason.

8 THE COURT: Okay. Defense counsel have any position
9 on that?

10 MR. MCGOVERN: Judge, that sounds like a reasonable
11 enough idea, with the idea that, you know, we'll see where we
12 are in January regardless. But with that in mind, and in mind
13 of the prior discussion we just had, it would be really helpful
14 to us if the government would provide us with the discovery
15 that serves as the very basis of this wire fraud count that has
16 been added to the indictment. If they were to provide us with
17 that, that might actually help us in all regards, either, you
18 know, having other conversations but at the same time having a
19 -- you know, being in a position to prepare our case, you know,
20 if the date's in April or the date's in March or whatever it
21 is. I don't see any good reason in a case like this, where
22 there is no -- you know, no threat of violence or security to
23 witnesses or anything like that, why it is that they're holding
24 back all the 302s and all the information that serves as the
25 basis of one count. And that count is as bare bones as one

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1 could make out a wire fraud count that deals with a very, very
2 complex set of facts.

3 So we would ask that, yeah, sure, if the Court's
4 inclined to set a trial date three months out from January,
5 that sounds -- you know, that sounds perfectly reasonable. And
6 actually Mr. Swett makes a distinct point. You know, maybe
7 it's better to nail it down now so we don't have to scramble
8 later. And that sounds fine. But similarly it sounds
9 reasonable -- to us anyway -- that we get the discovery that we
10 need to be prepared for whenever this trial is. We're going to
11 get it at some point; you might as well give it to us now, and
12 that way we can have a much more informed conversation about
13 dispositions and being in a position where we can prepare for
14 trial, whenever that day comes.

15 THE COURT: Okay. I'm not going to order the
16 government to do that now on this call, but certainly defense
17 counsel and the government should have more conversations about
18 that offline. If you want to submit something in writing to me
19 regarding this issue, you can. Let's go ahead and pick a date
20 in April.

21 Can we get a date sometime in April, Tara?

22 DEPUTY CLERK: Monday, April 12th, 2021.

23 THE COURT: Okay. So we'll set the trial down for
24 Monday, April 12th, 2021. That's the trial date. We'll see
25 what happens. Hopefully we'll have a sense of whether or not

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1 that can actually happen in January.

2 MR. MCGOVERN: Judge, may I add one more thing? I'm
3 sorry.

4 THE COURT: Yeah. Go ahead.

5 MR. MCGOVERN: We had contacted the government earlier
6 and told them that we were intending to make a bail application
7 to the Court, generally on the fact that Mr. Fowler has, you
8 know, very expensive legal expenses to defend these charges
9 and, you know, approximately \$268 million of his money and
10 money that involved in these transactions have been frozen.
11 And then we posted the securing bail with over a million
12 dollars. And we were going to ask for the Court to release the
13 properties that were secured so that he could handle his legal
14 expenses. And the government said, look, we need time to look
15 into this, let us do that. And so we are requesting -- and I
16 think jointly with the government -- if the Court could set a
17 bail hearing for next week. And hopefully we don't need it if
18 the government and the defense are able to reach an agreement.

19 THE COURT: Let's do this. Let's do this instead of
20 setting a date for a bail hearing. Let's set a date next week
21 for the filing of a joint status report, because at this point,
22 without some other earlier deadlines, it's not going to be
23 particularly helpful if we just have a bail hearing Friday and
24 I'm asked to sort of freestyle off of what's being said in
25 court on the record. Let's get a joint status report on

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1 Friday. And if the parties haven't reached some resolution,
2 the parties can lay out their positions in that status report
3 and then we can set a bail hearing after that if we need to.
4 Let's have a joint status report filed on Friday, the 23rd.

5 MR. MCGOVERN: That's perfect. Thank you, Judge.

6 MR. SWETT: Thank you, Judge.

7 THE COURT: I will exclude time under the Speedy Trial
8 Act from today's date until April the 12th, 2021, so that
9 defense counsel may continue to prepare for trial. I find that
10 the interests of justice and the interests of Mr. Fowler
11 outweigh the public's interest in a speedy trial. And I will
12 enter an order to that effect.

13 Anything else from the government today?

14 MR. SWETT: Your Honor, two quick things very briefly.

15 First, should we prepare for a status conference on
16 January 7th, at 10:00 a.m., which was currently on the calendar
17 as the final pretrial conference?

18 THE COURT: Let's just go ahead and make it that
19 January the 11th, which I guess was the start of the trial.
20 Let's make it January the 11th, at 10:00 o'clock a.m.

21 MR. SWETT: Thank you, your Honor.

22 And the only other thing -- I just want to make sure
23 that the record is clear. The government has produced
24 discovery related to Count Three, and I think what Mr. McGovern
25 was referring to was more 3500 materials, such as witness

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1 statements. We're happy to discuss with defense counsel early
2 disclosure of those materials, but we have produced records
3 relating to the wire fraud count. And I just didn't want that
4 misimpression left on the record.

5 THE COURT: Okay.

6 MR. MCGOVERN: And I agree with that.

7 THE COURT: Anything else from the defense?

8 MR. MCGOVERN: No, your Honor. Thank you very much
9 for your time.

10 THE COURT: Okay. All right. We're adjourned. Take
11 care.

12 MR. MCGOVERN: Thank you.

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